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KSRSS, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

JENNIFER MEADE, individually,  
on behalf of others similarly situated,  
and on behalf of the general public

Plaintiff,

vs.

ADVANTAGE SALES &  
MARKETING, LLC,  
ADVANTAGE SALES &  
MARKETING, INC., RETAIL  
STORE SERVICES, LLC, and  
KSRSS, INC.

Defendants.

CASE NO. C-07-5239-SI

**DEFENDANT KSRSS, INC.'S  
ANSWER TO AMENDED CLASS  
ACTION COMPLAINT FOR  
DAMAGES, RESTITUTION AND  
INJUNCTIVE RELIEF**

Defendant KSRSS, Inc. ("KSRSS") hereby answers plaintiff Jennifer Meade's ("Plaintiff") Amended Complaint for Damages, Restitution and Injunctive Relief ("Amended Complaint") as follows:

**PRELIMINARY STATEMENT**

1. KSRSS admits that Plaintiff was employed by KSRSS, under its prior name Retail Store Services, Inc., as a merchandising representative beginning on or about April 8, 2004 and until September 30, 2005. Subsequent to September 30, 2005, KSRSS changed its name from Retail Services, Inc. to KSRSS, Inc. KSRSS

1 is informed and believes that beginning on or about October 1, 2005, RSS LLC  
2 employed Plaintiff as a merchandising representative. KSRSS further admits that  
3 Plaintiff's job responsibilities while employed by KSRSS as a merchandising  
4 representative included receiving and displaying marketing and promotional  
5 materials for certain products sold at home improvement stores. Except as  
6 specifically admitted, KSRSS denies, generally and specifically, each and every  
7 allegation contained in Paragraph 1.

8 2. KSRSS denies, generally and specifically, each and every allegation  
9 contained in Paragraph 2.

10 3. KSRSS denies, generally and specifically, each and every allegation  
11 contained in Paragraph 3.

12 4. KSRSS denies, generally and specifically, each and every allegation  
13 contained in Paragraph 4.

#### 14 THE PARTIES

15 5. KSRSS is without sufficient knowledge or information to form a belief  
16 as to the truth of the allegation regarding Plaintiff's residency, and on that basis  
17 denies each and every allegation contained in the first sentence of Paragraph 5.  
18 Answering the second sentence of Paragraph 5, KSRSS admits that Plaintiff was  
19 employed by KSRSS, under its prior name Retail Store Services, Inc., as a  
20 merchandising representative beginning on or about April 8, 2004 and until  
21 September 30, 2005, and that she worked in parts of Northern California. On  
22 information and belief, KSRSS further admits that beginning on or about October 1,  
23 2005, RSS LLC employed Plaintiff as a merchandising representative. Except as  
24 specifically admitted, KSRSS denies, generally and specifically, each and every  
25 allegation contained in Paragraph 5.

26 6. KSRSS is without sufficient knowledge or information to form a belief  
27 as to the truth of the allegations contained in Paragraph 6, and on that basis denies  
28 each and every allegation contained in Paragraph 6.

7. KSRSS is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7, and on that basis denies each and every allegation contained in Paragraph 7.

8. KSRSS is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8, and on that basis denies each and every allegation contained in Paragraph 8.

9. KSRSS admits that Plaintiff was employed by KSRSS, under its prior name Retail Store Services, Inc., as a merchandising representative beginning on or about April 8, 2004 and until September 30, 2005. KSRSS further admits that subsequent to September 30, 2005, KSRSS changed its name from Retail Services, Inc. to KSRSS, Inc. Except as specifically admitted, KSRSS denies, generally and specifically, each and every allegation contained in Paragraph 5.

### **JURISDICTION AND VENUE**

10. KSRSS admits that the Court has subject matter jurisdiction over Fair Labor Standards Act ("FLSA") claims. KSRSS further admits that the Amended Complaint it received contained an attachment "A" identified in part as a "Plaintiff Consent Form." Regarding the last sentence of Paragraph 10, supplemental jurisdiction over alleged state law claims is a matter for the Court, in its discretion, to determine. Except as specifically admitted, KSRSS denies, generally and specifically, each and every allegation contained in Paragraph 10.

11. KSRSS admits that, with respect to Plaintiff's FLSA allegations as against KSRSS, venue is proper in the United States District Court, Northern District of California. Except as specifically admitted, KSRSS is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis denies each and every allegation contained in Paragraph 11.

12. KSRSS admits that, with respect to Plaintiff's FLSA allegations as against KSRSS, venue is proper in the United States District Court, Northern District of California. Except as specifically admitted, KSRSS is without sufficient

1 knowledge or information to form a belief as to the truth of the allegations, and on  
2 that basis denies each and every allegation contained in Paragraph 12.

3 **COLLECTIVE ACTION ALLEGATIONS**

4 13. KSRSS denies, generally and specifically, each and every allegation  
5 contained in Paragraph 13.

6 14. KSRSS denies, generally and specifically, each and every allegation  
7 contained in Paragraph 14.

8 15. KSRSS denies, generally and specifically, each and every allegation  
9 contained in Paragraph 15.

10 16. KSRSS denies, generally and specifically, each and every allegation  
11 contained in Paragraph 16.

12 17. KSRSS denies, generally and specifically, each and every allegation  
13 contained in Paragraph 17.

14 18. KSRSS denies, generally and specifically, each and every allegation  
15 contained in Paragraph 18.

16 **CLASS ACTION ALLEGATIONS**

17 19. KSRSS denies, generally and specifically, each and every allegation  
18 contained in Paragraph 19.

19 20. KSRSS denies, generally and specifically, each and every allegation  
20 contained in Paragraph 20.

21 21. KSRSS denies, generally and specifically, each and every allegation  
22 contained in Paragraph 21.

23 22. KSRSS denies, generally and specifically, each and every allegation  
24 contained in Paragraph 22.

25 23. KSRSS denies, generally and specifically, each and every allegation  
26 contained in Paragraph 23.

27 24. KSRSS denies, generally and specifically, each and every allegation  
28 contained in Paragraph 24, including all subparts thereof.



1 33. KSRSS denies, generally and specifically, each and every allegation  
2 contained in Paragraph 33.

3 34. KSRSS denies, generally and specifically, each and every allegation  
4 contained in Paragraph 34.

5 35. KSRSS denies generally and specifically, that Plaintiff has been or will  
6 be damaged in the amounts alleged, in any other amount, or at all. KSRSS further  
7 denies, generally and specifically, that the elements of relief sought are available to  
8 Plaintiff on the claims alleged. Accordingly, KSRSS denies, generally and  
9 specifically, each and every allegation contained in Paragraph 35.

10 36. KSRSS denies Plaintiff's entitlement to fees and costs and accordingly  
11 denies, generally and specifically, each and every allegation contained in Paragraph  
12 36.

### 13 **SECOND CLAIM FOR RELIEF**

14 37. KSRSS alleges and incorporates by reference its answers to the  
15 preceding paragraphs.

16 38. IWC Wage Order number 4 and California Labor Code sections 510  
17 and 1198 speak for themselves. Accordingly, KSRSS denies, generally and  
18 specifically, each and every allegation contained in Paragraph 38.

19 39. KSRSS denies, generally and specifically, each and every allegation  
20 contained in Paragraph 39.

21 40. KSRSS denies, generally and specifically, each and every allegation  
22 contained in Paragraph 40.

### 23 **THIRD CLAIM FOR RELIEF**

24 41. KSRSS alleges and incorporates by reference its answers to the  
25 preceding paragraphs.

26 42. KSRSS denies, generally and specifically, each and every allegation  
27 contained in Paragraph 42.

28 43. KSRSS denies, generally and specifically, each and every allegation

1 contained in Paragraph 43.

2 **FOURTH CLAIM FOR RELIEF**

3 44. KSRSS alleges and incorporates by reference its answers to the  
4 preceding paragraphs.

5 45. California Labor Code section 226(a) speaks for itself. Accordingly,  
6 KSRSS denies, generally and specifically, each and every allegation contained in  
7 Paragraph 45.

8 46. KSRSS denies, generally and specifically, each and every allegation  
9 contained in Paragraph 46.

10 **FIFTH CLAIM FOR RELIEF**

11 47. KSRSS alleges and incorporates by reference its answers to the  
12 preceding paragraphs.

13 48. California Business and Professions Code section 17200 speaks for  
14 itself. KSRSS denies, generally and specifically, each and every allegation  
15 contained in Paragraph 48.

16 49. KSRSS denies, generally and specifically, each and every allegation  
17 contained in Paragraph 49.

18 **PRAYER FOR RELIEF**

19 50. KSRSS denies, generally and specifically, that Plaintiff has been or  
20 will be damaged in the amounts alleged, in any other amount, or at all. KSRSS  
21 further denies, generally and specifically that the elements of relief sought are  
22 available to Plaintiff on the claims alleged. Accordingly, KSRSS denies, generally  
23 and specifically, each and every allegation contained in Paragraph 50.

24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26  
27 As a first and separate affirmative defense, KSRSS alleges that the Amended  
28 Complaint and each of its purported causes of action fails to state facts sufficient to

1 constitute a cause or causes of action against KSRSS.

2  
3 **SECOND AFFIRMATIVE DEFENSE**

4 As a further and separate affirmative defense, KSRSS alleges that the  
5 Amended Complaint, as well as each purported cause of action therein, is barred by  
6 the applicable statute of limitations, including 29 U.S.C. section 255, California  
7 Code of Civil Procedure § 338(a) and California Code of Civil Procedure § 340(a),  
8 California Business and Professions Code section 17208.

9  
10 **THIRD AFFIRMATIVE DEFENSE**

11 As a further and separate affirmative defense, KSRSS alleges that Plaintiff is  
12 barred from pursuing the Amended Complaint and each of its purported causes of  
13 action because any recovery from KSRSS would result in Plaintiff's unjust  
14 enrichment.

15  
16 **FOURTH AFFIRMATIVE DEFENSE**

17 As a further and separate affirmative defense, KSRSS alleges that the  
18 Amended Complaint and each of its purported causes of action are not proper for  
19 treatment as a class action or collective action. Plaintiff therefore lacks standing to  
20 represent the individuals she purports to represent.

21  
22 **FIFTH AFFIRMATIVE DEFENSE**

23 As a further and separate affirmative defense, KSRSS alleges that Plaintiff,  
24 as a private litigant, lacks standing to bring a claim for damages under California  
25 Business and Professions Code section 17200 or for penalties under the California  
26 Labor Code.

27 ///

28 ///

**SIXTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that any alleged “off the clock” work by Plaintiff was *de minimis* and thus not compensable.

**SEVENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, and without admission that any damage has been sustained, KSRSS alleges that it is entitled to an offset against any relief claimed by Plaintiff for wages KSRSS has paid Plaintiff and purported class members for time not worked or that otherwise is not required under state and/or federal law.

**EIGHTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that the Amended Complaint and each of its purported causes of action are barred by the doctrine of res judicata to the extent that any member of the purported class pursued and resolved to final judgment any claim alleged in the Amended Complaint.

**NINTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that Plaintiff's damages, if any, were proximately caused or contributed to by the acts, omissions or wrongful conduct of persons or entities over whom/which KSRSS had no control and over whom/which KSRSS can have no responsibility or liability.

**TENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that the Amended Complaint and each of its purported causes of action are barred by Plaintiff's failure to take reasonable steps to avoid or otherwise mitigate the claimed damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that the Amended Complaint and each of its purported causes of action are barred by the doctrine of laches as Plaintiff unreasonably delayed in bringing this action without good cause therefore, and thereby prejudiced KSRSS.

**TWELFTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted because Plaintiff received proper payment for all time worked for KSRSS.

**THIRTEENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action because the hours claimed are not "hours worked" within the meaning of the applicable Insurance Welfare Commission orders.

**FOURTEENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, and merely for purposes of stating this defense without admission that any damage has been sustained, KSRSS alleges that Plaintiff has an adequate remedy at law, so that equitable, declaratory, or injunctive relief would not be appropriate.

**FIFTEENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges that Plaintiff is estopped from pursuing the Amended Complaint and each of its purported causes of action by reason of her own actions and course of conduct.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, and without admission of any violation of law, KSRSS alleges that any failure to pay wages or overtime was not willful and therefore the Amended Complaint fails to state a claim for penalties under the California Labor Code, for a three-year limitations period under the FLSA or for liquidated damages under the FLSA.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

As a further and separate affirmative defense, KSRSS alleges, to the extent that Plaintiff requests statutory penalties under the California Labor Code, Plaintiff is barred from recovering such penalties because Plaintiff did not timely exhaust the administrative remedies as required and/or otherwise failed to comply with all the statutory prerequisites to bring suit under the California Labor Code Private Attorney General Act of 2004. Cal. Lab. Code § 2699, et. seq.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Discovery in this matter may reveal bases for an avoidance or affirmative defense. KSRSS reserves the right to amend this answer to plead such affirmative defenses should they be discovered.

**WHEREFORE**, KSRSS prays as follows:

1. That certification as a collective action under the FLSA be denied;
2. That class certification be denied;
3. That Plaintiff take nothing by her Amended Complaint;
4. That Plaintiff's Amended Complaint herein be dismissed in its entirety with prejudice;
5. That judgment be entered for KSRSS;
6. That KSRSS recover their costs of suit herein, including their

1 reasonable attorneys' fees; and

2 7. That the court award such other and further relief as it deems  
3 appropriate.

4  
5 Dated: March 26, 2008

SNELL & WILMER L.L.P.

6  
7 By: \_\_\_\_\_ s/Frank Cronin

8 Frank Cronin

9 Erin Denniston

10 Attorneys for Defendant

11 KSRSS, Inc.

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